Filed 7/29/15 In re Erick S. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

In re ERICK S., a Person Coming Under the Juvenile Court Law.	B262244 (Los Angeles County Super. Ct. No. CK95876)
MARITZA H., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	

ORIGINAL proceeding for extraordinary writ. Marguerite Downing, Judge. Writ denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Marlene Furth, Christina Samons and Melissa A. Chaitin for Petitioner.

No appearance for Respondent.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Real Party in Interest.

In this extraordinary writ proceeding, Maritza H. (mother) challenges the juvenile court's finding at a hearing under Welfare and Institutions Code[1] section 366.21, subdivision (f), that the Los Angeles Department of Children and Family Services (the Department) provided her reasonable family reunification services, and the court's order terminating mother's reunification services. Mother contends there was insufficient evidence to support the court's finding because the Department failed to facilitate visits for mother with her son, Erick S., who was placed in a foster home a considerable distance from mother's home. Mother also contends the juvenile court erred by failing to exercise its discretion to extend reunification services in light of the Department's failure to provide reasonable services during the previous reporting period. We conclude there was sufficient evidence to support the juvenile court's finding, and the court did not err by not ordering additional services. Accordingly, we deny the writ.

BACKGROUND

Mother has three children: Erick (born in November 2002), whose father could not be located by the Department, and Abraham H. (born in May 2004), and Lesly H. (born in February 2007), whose father, Eduardo H., participated in the juvenile court proceedings. This writ proceeding involves only mother and Erick, so our discussion of the facts will focus primarily on the facts relevant to them.

This family has had a long history with the Department due to mother's mental health issues that affect her ability to maintain a safe and clean environment for her children.

In May 2009, the Department received a referral alleging general neglect and emotional abuse by mother as to all three children. The caller reported that

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[1] Further undesignated statutory references are to the Welfare and Institutions Code.

mother did not regularly feed or bathe the children, and did not clean their home, which the caller said was filthy. The caller also reported that when Eduardo sometimes tried to take the children to eat or tried to bathe them, mother would get mad and would throw things at Eduardo in front of the children.

The allegations were substantiated, and on June 25, 2009, the parties agreed that the family would receive voluntary family maintenance services. The children were referred to specialized foster care, and mother and Eduardo participated in parenting, substance abuse, and anger management programs, and completed random drug/alcohol tests. In addition, each of the children received individual counseling, and mother, who was diagnosed with depression, attended counseling with the Department of Mental Health (DMH) and was prescribed medication for her depression.

The family was reunited when Erick was returned home in December 2009. Mother and Eduardo began receiving family preservation services on November 9, 2009, and the case was closed on June 24, 2010 because mother and Eduardo were in compliance with the service plan and the Department case plan.

On May 9, 2012, another referral was called into the Department hotline, alleging that Erick was the victim of a threat of physical abuse by his stepfather, Eduardo. The reporting party, who was Erick's therapist, stated that Erick disclosed he had witnessed Eduardo hit mother with a hanger. The therapist asked mother about the incident, and mother said that the incident occurred about three months earlier.

When the social worker (the CSW) went to the home a week later to investigate the allegations, she found the home was filthy. It smelled of urine and feces, there were ants and roaches everywhere, including in the refrigerator, and dried feces on the bathroom floor. There was food on the table that appeared to have been there for several hours, and spoiled food in the refrigerator. The CSW

told mother that the conditions of the home were a health hazard, and warned mother that she had to clean the home within the next two days.

The CSW then addressed the allegations of the referral. Mother said that she knew the CSW was there because Erick's therapist made a report due to Erick's disclosure. She stated that the allegation that Eduardo hit her with a hanger was not true. She explained that the incident Erick was referring to happened in December 2011. Eduardo got angry because the house was dirty, and he threw clothes on the floor. Mother got mad and went after Eduardo, yanking his hair. Eduardo was upset, and slapped her two or three times on her body. Erick witnessed the fight. Mother said that she did not consider the incident physical abuse because she provoked Eduardo. Mother reported that the police came to their home on May 9, 2012 as a result of the therapist's report and arrested Eduardo. He was released from jail on May 14, and was staying with one of his sisters because there was a restraining order in place, ordering him to stay away from mother and the children.

Mother told the CSW that Erick had been receiving therapy through the LA Child Guidance Clinic since he was removed from her through the voluntary reunification case in 2009. She said that that case arose because she was using drugs (cocaine, crystal, and marijuana) and drinking alcohol, and she had a problem cleaning her home. She told the CSW she took classes and has been clean and sober since 2009. She said she believed her difficulty cleaning the home was due to depression, with which she was diagnosed when she completed an up-front assessment in the 2009 case. She was being seen by the DMH and was prescribed medication, which she was taking until she ran out about six months earlier. She could not get the prescription refilled because the DMH closed her case after she missed three appointments. She said that when she does not take her medication, she does not feel like cleaning. She also said that she recently went to the DMH

and got an appointment to see a therapist later that month, but she could not get an appointment with a psychiatrist (to get her prescription) until the following month. Although the DMH gave her a flyer explaining how to get medication at the emergency room, she had not followed up on it because she did not have transportation.

The CSW made a safety plan with mother. Under the plan, mother was to (1) follow all criminal court orders and not violate the restraining order; (2) go to the emergency room as soon as possible to get psychotropic medication for herself; and (3) clean her home by May 18, 2012. Mother signed the safety plan.

After meeting with mother, the CSW spoke with Eduardo's sister Isabel, who lived next door to mother. Isabel told the CSW that mother's home often was dirty. Isabel used to help mother clean, but she could not help recently because she was pregnant and got nauseous easily. She said that when the children lived with her after they were removed from mother in the 2009 case, they stopped urinating on their beds and were able to follow a routine with rules and structure. She observed that mother was extremely passive with the children, in that she did not correct their behavior or make them do homework, and she did not feed them nutritious food. Isabel said that she continued to look out for mother and the children, calling mother in the mornings to wake her up so she could get the children ready for school, and reminding mother after school to feed the children and have them do their homework.

The CSW visited mother's home five days after her previous visit, and found that it was noticeably cleaner, although there still was a strong smell of urine. Over the next few months, the CSW or others visited the home and found that although the home was dirty and smelled of urine, it not as dirty as it had been.

On September 4, 2012, Erick's therapist called the CSW and reported that she had made an unannounced visit to mother's home and saw Eduardo in front of

his sister's home, next door to mother's home. When the therapist told mother about it, mother said, "He is not inside my house, I don't know what happens outside my house." The CSW went to mother's home two days later. She asked mother if Eduardo was coming to the home, and mother said she had not seen him. The CSW then spoke with each child. Each of them admitted that Eduardo came to the home, and the two eldest said that Eduardo sometimes stayed overnight. In addition, the CSW asked each child about what they were given to eat. Erick and Abraham told the CSW that they ate breakfast and lunch at school, and all three said mother mostly gave them cereal or cookies and milk; Erick also said that mother sometimes made them pancakes.

On October 9, 2012, the Department filed a juvenile dependency petition alleging counts under section 300, subdivisions (a) and (b). Counts a-1 and b-1 were based upon allegations that mother and Eduardo engaged in verbal and physical altercations in the presence of the children and violated a criminal restraining order. Count b-2 alleged that mother had emotional problems, including depression, that periodically rendered her incapable of providing regular care to her children, and that she had not regularly taken her psychotropic medication; those counts also alleged that she had created a detrimental home environment that placed her children at risk of physical harm. Count b-3 was based upon allegations regarding the filthy conditions found at mother's home on September 6, 2012 and on prior occasions in 2012.

In a report filed for the detention hearing, the Department discussed the family's history with the Department, including the Department's attempts to assist mother, both in 2009 and since May 2012. The report noted that the CSW conducted a safety and risk assessment, which indicated there was a high risk for the family based upon the prior case and mother's continued inability to maintain a clean home. However, the Department believed there was not currently a

substantial danger to the physical health and well-being of the children, and the children were not detained. The Department also noted that although Eduardo violated the restraining order, it had no concerns regarding the safety of the children while in Eduardo's care. Therefore, the Department concluded that the matter should be filed as a non-detained petition for the children.

At the detention hearing held on October 9, 2012, the juvenile court found a prima facie case for detaining all three children was established. The court released the children to their parents, and ordered the Department to provide the children, mother, and Eduardo family maintenance services. The court continued the matter to November 9, 2012 for a pretrial resolution conference (PRC), and ordered the Department to address a possible section 301 contract (for voluntary family maintenance services) in its next report.

The Department addressed the section 301 contract in a last minute information for the court filed on the day of the PRC. It stated that such a contract was not appropriate in this case because the family received voluntary family maintenance services in 2009 to address mother's mental health and the domestic violence in the house. The Department noted that despite having received mental health services and completing parenting and domestic violence programs, mother and Eduardo failed to ameliorate the issues that brought the family to the attention of the Department. In the jurisdiction/disposition report filed for the PRC, the Department reported that mother was participating in individual therapy and was prescribed medication, but she was not taking the medication as prescribed, which was impacting her parenting. The Department noted that the children had several absences and truancies from school, as well as several tardies. Regarding Erick, the Department reported that he was on medication for enuresis (urinary incontinence) and psychotropic medication for ADHD. Erick also was in therapy and was enrolled in special education classes.

The juvenile court continued the PRC for a further report. The court ordered the Department to file a supplemental report addressing section 360, subdivision (b),[2] and the status of Eduardo's restraining order. In that supplemental report, the Department stated that it "is not inclined to offer the family a WIC 360(b)" for the same reason it found that a section 301 contract would not be appropriate, i.e., the family's issues had not been ameliorated even after they received voluntary family maintenance services in 2009. The Department also reported that the restraining order was modified to allow Eduardo to have peaceful contact with mother for the safe exchange of the children for visitation. However, the Department noted it appeared that mother and Eduardo violated the restraining order when the entire family went to a swap meet together. At the continued PRC, the court continued the matter again for a contested adjudication hearing.

At the adjudication hearing held on January 17, 2013, mother and Eduardo waived their rights and submitted the petition on the basis of the social worker's report and other documents. The juvenile court sustained counts b-1 and b-2, and dismissed counts a-1 and b-3. The court placed the children in the home of parent-mother, and ordered the Department to provide the parents and children family maintenance services. The court signed the case plan, which ordered mother to participate in psychiatric care and take all prescribed psychotropic medication, and to attend individual counseling to address mental health, domestic violence, home environment, and coping strategies.

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[2] Section 360, subdivision (b) provides: "If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301."

In July 2013, the Department filed a status review report. The Department reported that mother continued to struggle to provide a clean home and clean clothes for the children, and to ensure the children attended school daily. It noted that mother had not consistently maintained a clean home despite ongoing in-home services. The Department also reported that she was meeting with a therapist for counseling services and with a physician for medication. Mother's therapist reported to the CSW in June 2013 that mother's mental health had deteriorated, and that she had begun hearing voices. The therapist said that mother currently was diagnosed with "Major Depression Severe with Psychotic Episodes," and that some of the challenges with mother had been that mother forgot appointments and did not use her counseling sessions to talk about her problems.

At the section 364 hearing in July 2013, the court ordered that mother be examined under Evidence Code section 730 by Dr. Alfredo E. Crespo. The court then continued the hearing to September for a team decision making meeting (TDM), and ordered the Department to file a report addressing the results of the TDM.

The Department reported on the TDM in a last minute information for the court filed on September 9, 2013. The participants in the TDM included mother, mother's "Parent Partner," and Erick's therapists. Mother reported at the TDM that "she has been getting a lot of help from the Wrap Around Team who remind her of what [she] need[s] to do." Erick's therapist expressed concerns about Erick because he had regressed in therapy. The therapist also noted that mother's therapy services had been inconsistent due to changes in staff at the mental health facility, and that mother needed more frequent sessions. She observed that there appeared to be undiagnosed cognitive barriers to mother's ability to care for her children.

In addition to reporting on the TDM, the Department reported that mother's Evidence Code section 730 evaluation had taken place, but Dr. Crespo had not yet issued his report. Finally, the Department reported that mother continued to struggle to provide appropriate care to her children, even though she was in compliance with her case plan.

At the hearing held on September 9, 2013, the juvenile court terminated the order placing Abraham and Lesly in home of parent-mother, and placed them with Eduardo. The court ordered family preservation services for mother and Erick.

On September 29, 2013, the Department received an expedited referral stating that Lesly reported that Abraham had touched her private part when they were living with mother or during a scheduled visit with mother. Sheriff's deputies were dispatched to mother's home to investigate the wellbeing of the children. One of the deputies reported that when they arrived, only mother and Erick were there. As soon as mother opened the door, the deputy was met with the smell of urine and human excrement. When the deputy met with Erick, Erick's clothes were heavily saturated with urine, and he also smelled of human feces. The deputy observed that Erick had defecated on the floor; Erick told him that mother left the feces on the floor. The deputy asked mother about it, and she told him that Erick suffered from both enuresis (urinary incontinence) and encopresis (involuntary defecation). She said that Erick had defecated on the floor 24 hours earlier, and she wanted Erick to clean it up. Based upon the condition of the home (the entire house was infested with roaches, and the condition was made worse by several cats living in the home) and mother's obvious neglect of Erick, the deputies arrested mother for cruelty to a child. When the CSW arrived at the Sheriff's station in response to the referral, the deputy turned Erick over to his custody.

The Department filed a section 342 subsequent petition on October 3, 2013, alleging four counts under section 300, subdivisions (b) and (j). Counts b-1 and j-1

alleged that mother failed to provide supervision over Abraham and Lesly, resulting in Abraham inappropriately touching Lesly. Counts b-2 and j-2 alleged that mother established an unsanitary home environment on September 29, 2013. The petition indicated that Erick was detained in shelter/foster care.

In its report for the detention hearing, the Department reported that the CSW interviewed two women from Crittenton Wraparound Services who had worked with mother. One of them, who had worked with mother for the previous three months, told the CSW that "a concerted effort was launched to assist mother," but "even with adequate resources in place . . . mother has consistently fallen short of meeting such goals as taking her prescribed medication, cleaning her home, and making certain that her children are groomed and prepared for school." The other woman, who had worked with mother for nearly a year, told the CSW that she believed mother's depression was due to mother having been sexually molested as a child by her stepfather and not having had access to mental health services. She also believed that mother loves her children but lacks the skills needed to meet their basic needs.

The Department's report attached Dr. Crespo's evaluation of mother. Dr. Crespo noted that mother "has obviously struggled with depression," but "her current test results suggested difficulties stemming more from anxiety than with depressed affect." He observed that certain results "suggest that despite the services, e.g., parenting classes, that have been provided to her, she remains limited in her parenting skills. This may be especially problematic in combination with the age and ADHD problems that have been attributed to her oldest son." He concluded that mother should be referred for individual therapy in which mother should be expected to "reflect upon and process her various symptoms of depression, especially her chronic, lethargic state which, in combination with intense anxiety, permeates her daily life to such an extent that little self-efficacy

has been gained from services and have kept her stuck in a socio-emotional dependent stance she may be presently little motivated to shed." Dr. Crespo also indicated that mother might "benefit from out-patient individual counseling that first promotes concrete, self-improvement steps, e.g., keeping a clean home, and then gradually challenges her to seek to become more self-reliant by attaining job skills she presently lacks." In addition, he opined that mother "may also benefit from in-home counseling that targets her inability to overcome the chronic lethargy that continues to prevent her from independently carrying out basic house chores and similarly basic parenting responsibilities, e.g., ensuring the children keep good school attendance."

At the detention hearing on the section 342 petition, the juvenile court found a prima facie case for detaining the children was established, and ordered the children detained from mother. The court released Abraham and Lesly to Eduardo, and ordered Erick detained in shelter care. The court ordered family reunification services be provided for mother and Erick, with monitored visits twice a week for two hours.

In its jurisdiction/disposition report filed on November 1, 2013, the Department reported that three weeks after the detention hearing, Lesly told the CSW that mother's home was still dirty. The CSW called mother that same day to schedule a visit to mother's home, but mother did not want to meet at her home because she had not cleaned it. She scheduled an appointment at the Department's office in Compton, but failed to show up and did not answer her phone when the CSW called. The Department also reported in a last minute information filed with the court that the CSW's shelter care request for Erick was denied due to Erick's issues with encopresis.

Six weeks later, the Department reported that Erick was adjusting well to his placement, although he missed his family. The Department also noted that mother

was visiting Erick weekly, but she said it was expensive to visit because Erick's foster home was in Antelope Valley, so mother could not use her Los Angeles County bus pass.

At the adjudication hearing on December 12, 2013, mother submitted on the section 342 petition and entered into a mediation agreement. As part of that agreement, mother agreed to a case plan that required her to complete a parenting program and participate in individual counseling. The juvenile court sustained the petition, and ordered that custody of Erick was to be taken from mother. The court signed the case plan, and ordered monitored visitation for mother twice a week for four hours.

In its status review report for the six-month review to be held in June 2014, the Department reported that Erick was thriving in his placement with his foster mother, who was helping him cope with his encopresis. He was doing well at school, and his therapist reported that he had no current behavioral issues. His therapy services were closed in May 2014 (over the foster mother's and the CSW's objection) because he no longer met medical necessity for services and was doing well in his placement and in school.

The Department also reported that mother told the CSW in April 2014 she did not know when her next therapy appointment was. The CSW called the mental health facility, and was told that mother's therapist no longer worked for DMH. Two weeks later, mother told the CSW that she was assigned a new therapist, but she had not been able to reach that therapist yet. She said that she still met with a doctor monthly and had a prescription for her medications. When the CSW spoke with mother a week later, however, mother said she was not taking her medications because she had not picked them up from the pharmacy. Nevertheless, mother completed her parenting classes and was visiting Erick weekly. The Department reported that mother's visits were appropriate, and that mother was spending

quality time with Erick. However, mother said that she could only visit him once a week because he was placed so far away and attended school.

At the six-month review hearing on the section 342 petition, the juvenile court found that reasonable services were provided to mother and that mother was in partial compliance with her case plan. The court incorporated the orders recommended by the Department in its status review report, which included an order for mother to comply with her mental health recommendations. The matter was continued to December 11, 2014 for a 12-month review hearing.

In its status review report for the 12-month review hearing, the Department reported that Erick was thriving in his placement; he appeared more emotionally stable and was doing better at school. The Department also reported that although mother had completed her court-ordered programs for parenting, domestic violence, and anger management, she did not regularly attend her counseling sessions; she had met with her therapist only twice since she was assigned a new therapist in May 2014. Mother continued, however, to visit Erick for an hour once every week (although she was told she could have longer visits, mother said she could not due to the train schedule). Mother's visits were appropriate, and Erick reported that he enjoyed the visits. The Department recommended that the juvenile court terminate family reunification services, and recommended legal guardianship with Erick's foster mother as the permanent plan.

The 12-month review hearing was held on February 5, 2015. All parties submitted on the documents presented by the Department (the status review report and a last minute information for the court). Counsel for Erick noted that Erick wanted to return to mother, but counsel argued that that would create a substantial risk of detriment because there was insufficient evidence that mother had made substantive progress in her parenting skills. Counsel also noted that mother failed to regularly participate in therapy, having attended only two sessions in the period

covered by the status review report. Counsel asked the court to terminate family reunification services, set a section 366.26 hearing, and explore legal guardianship as the permanent plan.

Mother's counsel asked the court to order additional reunification services for mother, arguing that mother was in compliance with her case plan. Counsel disputed that mother had attended only two therapy sessions, although she did not present any evidence to suggest otherwise. She noted that mother visited with Erick consistently, but argued that the Department did not provide reasonable services because of the great distance between where mother lived and where Erick lived with his caretaker.

The juvenile court found that the extent of mother progress toward alleviating or mitigating the issues necessitating Erick's removal was partial. The court observed that even though mother completed the court-ordered programs and regularly visited Erick, she did not make significant progress in resolving the issues that led to Erick's removal, nor did she demonstrate the capacity or ability to complete the objectives of her treatment or to provide for Erick's safety or physical and emotional well being. The court found that the Department provided reasonable services, and that there was not a substantial likelihood that Erick could be returned to mother by the 18-month date. Therefore, the court terminated reunification services for mother and set a section 366.26 hearing

Mother filed a notice of intent to file a writ petition challenging the setting of the section 366.26 hearing.

DISCUSSION

Mother contends there is insufficient evidence to support the juvenile court's finding that the Department provided mother with reasonable reunification

services, and that the court erred by failing to exercise its discretion to extend mother's reunification services. We disagree.

A. *Substantial Evidence Supports the Juvenile Court's Finding That Reasonable Reunification Services Were Provided*

When a child is removed from a parent's custody, the responsible agency must make a good-faith effort to develop and implement reasonable family reunification services responsive to the needs of that family. (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 254.) "The adequacy of a reunification plan and of the department's efforts are judged according to the circumstances of each case. [Citation.] With respect to the plan itself, '[e]ach reunification plan must be appropriate to the particular individual and based on the unique facts of that individual. [Citations.]' [Citation.] 'The effort must be made to provide suitable services, in spite of the difficulties of doing so or the prospects of success. [Citation.]' [Citation.] '[T]he focus of reunification services is to remedy those problems which led to the removal of the children. . . .' [Citation.] '[T]he record should show that the [Department] identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the [mother] during the course of the service plan, and made reasonable efforts to assist the [mother when] compliance proved difficult. . . .' [Citation.]" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362.)

"When a finding that reunification services were adequate is challenged on appeal, we review it for substantial evidence." (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.) "[T]his court must view the evidence in a light most favorable to the respondent. We must indulge in all reasonable and legitimate inferences to uphold the judgment. [Citation.] 'If there is any substantial evidence to support the findings of a juvenile court, a reviewing court is without power to

weigh or evaluate the findings.'" (*In re Ronell A.*, *supra*, 44 Cal.App.4th at pp. 1361-1362.)

In this case, mother does not contend that the Department did not identify the problems that led to mother's loss of custody of Erick, or that it failed to offer services designed to remedy those problems or to assist her in complying with those services. Indeed, the evidence shows that the Department offered appropriate services, such as parenting classes and mental health services, and provided a Wrap Around Team to assist her in complying with her case plan. Instead, mother contends the Department failed to provide reasonable reunification services solely because it failed to assist her in visiting Erick more than once per week.

There is no doubt that Erick's placement in a foster home in Antelope Valley made it difficult for mother to visit him as often as the court ordered, and it appears the Department did not (or could not) assist mother in visiting more frequently. The question we must answer is, does the failure of the Department to facilitate more frequent visits preclude a finding that reasonable services were provided when there is substantial evidence that all of the services *designed to remedy the problems that led to mother's loss of custody* were provided? Under the circumstances of this case, we conclude it does not.

We recognize that providing a parent reasonable opportunities to visit with a child who has been removed from the parent's custody is critically important in child dependency proceedings. (See *In re Alvin R.*, *supra*, 108 Cal.App.4th at p. 972 ["Visitation is an essential component of any reunification plan"].) Regular visitation between the parent and the removed child allows the parent and child to maintain the bond between them while the family works towards reunification, which is the first priority of dependency proceedings. (*Ibid.*; see also *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 788.) The parent-child bond becomes

even more important if reunification efforts fail. Once reunification services are terminated, the case is sent to the permanency planning stage, where there is a statutory preference for adoption (with termination of parental rights) as the permanent plan. (*Id.* at pp. 788-789; see also *In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) But if there is a strong enough parent-child bond, the juvenile court may find that a statutory exception to the preference for adoption applies. (§ 366.26, subd. (c)(1)(B)(i).)

In this case, even though the Department did not provide assistance to allow mother to visit Erick more than once a week after he was removed from her custody, the bond between them remained strong. He enjoyed his visits with her, and expressed his desire to return to her custody. They were not able to reunify, however, because despite receiving family maintenance or family reunification services for more than three years (from May 2009 to June 2010, and again from January 2013 to February 2015), mother had not made significant progress in resolving the issues that led to Erick's removal. In fact, even though mother admitted those issues were related to her depression, she did not take her prescribed medication regularly and often missed her therapy appointments. Because of mother's lack of progress, the juvenile court concluded there was not a substantial likelihood that Erick could be returned to mother's care by the 18-month date[3] and terminated mother's reunification services. The court came to this conclusion while acknowledging that mother regularly visited Erick.

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[3] Under the dependency statutes, reunification services "may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not

In short, even if the Department had assisted mother so she could have more frequent visitation with Erick, those additional visits would not have changed the outcome here. Moreover, in setting the section 366.26 hearing to determine the permanent plan for Erick, the court indicated that "[i]n light of Erick's age and his preference, [the permanent plan] would be legal guardianship" rather than adoption; the court also increased mother's visitation time and ordered that it be unmonitored. Thus, it is by no means certain that mother's parental rights will be terminated.

In light of the record in this case, we conclude that substantial evidence supports the juvenile court's finding that mother was provided reasonable reunification services.

B. *The Juvenile Court Did Not Err by Declining to Extend Reunification Services*

Under section 366.21, subdivision (g), if a child is not returned to the parent's custody at the section 366.21, subdivision (f) hearing, the juvenile court may order additional reunification services (for a period not to exceed 18 months from the time the child was removed from the parent's custody), but only if the court finds there is a substantial probability that the child will be returned to the physical custody of his or her parent within those additional months. (§ 366.21, subds. (g)(1), (2).) In this case, as noted, the juvenile court found there was not a substantial likelihood that Erick could be returned to mother's care by the 18-month date and terminated mother's reunification services.

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been provided to the parent or guardian." (§ 361.5, subd. (a)(3).) In this case, Erick was removed from mother's custody when she was arrested on September 29, 2013, and was ordered detained in shelter care on October 3, 2103, so the 18-month date was, at the latest, April 3, 2015.

Mother contends the court erred by not exercising its inherent discretion to extend reunification services beyond the 18-month limit, relying upon *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774 (*Elizabeth R.*). Her reliance is misplaced.

In *Elizabeth R.*, the mother was hospitalized for mental illness for all but five months of the reunification phase, which limited her ability to participate in reunification services. (*Elizabeth R.*, *supra*, 35 Cal.App.4th at p. 1777.) Nevertheless, by the time of the 18-month review hearing, she had substantially complied with her case plan, was taking medication to control her bipolar disorder, and was in therapy. The judge who presided over the hearing observed that mother had done "tremendous work" and that "'[t]hings [had] changed considerably.'" (*Id.* at p. 1782.) Although the court "was impressed with [the mother's] progress and optimistic about her ability to sustain her mental health" (*id.* at p. 1783), it found it could not return the children to her custody at that time because she had been out of the hospital for only five weeks and needed time to demonstrate the stability of her recovery (*id.* at p. 1789). Believing that its only choice at the 18-month review hearing was to return the children to the mother's custody or terminate reunification services and order a section 366.26 hearing, the court terminated reunification services. (*Id.* at p. 1789.)

The appellate court disagreed that the juvenile was so constrained. Analogizing to cases in which parents received additional reunification services beyond 18-months where prior reunification services were deemed inadequate, the appellate court held that under the "unusual circumstances" of the case, the juvenile court had discretion -- "albeit limited" -- to extend the reunification period. (*Elizabeth R.*, *supra*, 35 Cal.App.4th at pp. 1787, 1796.)

The facts of this case are different in important respects from the facts of *Elizabeth R.* First, the mother in *Elizabeth R.* was in compliance with her case plan -- including taking her medication and attending therapy sessions. In contrast, in

this case, mother was not consistently taking her medication and had attended only two therapy sessions in the previous reporting period. Second, and most importantly, the mother in *Elizabeth R.* had demonstrated substantial progress in eliminating the issues that led to the removal of her children, while mother in the present case had not. In light of these significant differences, we conclude the juvenile court in this case did not err by not granting mother additional reunification services.[4]

DISPOSITION

The petition for extraordinary writ is denied.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J. COLLINS, J.

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[4] We note that mother contends that even if we conclude that the juvenile court properly terminated reunification services, it could and should have ordered Erick into a Planned Permanent Living Arrangement rather than set a section 366.26 hearing. Mother does not, however, offer any legal or factual analysis to support this contention. Therefore, we decline to address it.